

Tennessee Ethics Commission

July 22, 2008

The Tennessee Ethics Commission met on July 22, 2008 at 9:30 a.m. in Hearing Room 29, Legislative Plaza. Commissioners present were Hall, Brown, Garland, Knight and Neal. Commissioner Purser was absent.

Chairman Hall called the meeting to order at 9:50 and called for the approval of the June 24 minutes. Commissioner Neal made the motion to adopt the minutes and Commissioner Garland seconded. Commissioner Knight suggested changes and Commissioner Neal accepted the changes. The June 24 minutes were approved, with changes, 5-0.

The Commission proceeded with Old Business, Proposed Complaint Proceedings Rules. General Counsel David Himmelreich informed the Commission that, after the Commission adopted rules to govern proceeding regarding confidential complaints, the rules were sent to the Attorney General's office for review. Special Counsel assigned to review the rules informed staff that a portion of the rules was illegal in that it would conflict with a provision in the statute. She made other comments for the Commission to consider. Mr. Himmelreich stated that since there is an illegal provision in the rules, the current process can't continue and that the Commission would have to file a notification of withdrawal of the current rules. It would then be up to the Commission whether to restart the process with rules by publication or rules by rule-making hearing. Staff recommended rules by publication. After discussion, Commissioner Hall made the motion that: 1) Commissioner Knight work with staff on revisions; and 2) the Commission act on the recommendation of staff that rules be re-promulgated as publication rules. Commissioner Brown seconded and the motion carried 5-0. Commissioner Neal made the motion to adopt the recommendations of the Attorney General, including the motion that was previously passed. Commissioner Hall seconded and the motion carried 5-0.

The next item on the agenda was item 2A: Proposed Changes to Rules 0580-1-5. Associate Counsel Willow Fort presented the proposed changes to the Commission. These rules had also been sent to the Attorney General for review. Special Counsel Janet Kleinfelter had several recommendations, although she found nothing illegal with the rules. Commissioner Brown made the motion that the staff recommendations be adopted. Commissioner (not audible on tape) seconded; the motion passed 4-1, with Commissioner Knight voting no.

The Commission next considered Item 3: Miller Opinion (Dept. of Financial Institutions (whether an employer could waive registration fees for state officials, and, if so, are meals included with registration fee)). Commissioner Knight stated that she had some edits to the staff draft that would not change the outcome or reasoning. Commissioner Knight made the motion to work with staff on the edits. Commissioner Brown seconded and the motion carried 5-0 approving the opinion. Ms. Fort asked the Commission if the edits would come under the Garland rule or the Hall rule. Chairman Hall stated that they would come under the Hall rule.

The Commission discussed Item 4: Nebergall Opinion. The Commission discussed the staff draft. Commissioner Neal stated that, after reading TCA 4-9-102 (duties and powers of TCUL), she was persuaded that TCA 3-6-301(20) does include these commissioners as legislative officials. Commissioner Neal made that motion for purposes of generating discussion and Commissioner Garland seconded. Motion failed 3-2 with Commissioners Hall, Garland and Neal voting yes and Commissioners Knight and Brown voting no. This item was deferred to the next meeting.

Mr. Himmelreich presented a draft of proposed operating procedures, Item 5. Commissioner Neal made the motion to approve and Commissioner Hall seconded. Motion passed 5-0. Commissioner Knight made a motion to amend the Garland rule of the proposed procedures to include a provision that if a commissioner proposes edits, there will be an effort to collaborate between staff and commissioner before final decision is made. Motion failed for a lack of a second.

The Commission adjourned for lunch and reconvened at 1:15 p.m.

Due to time constraints, the Commission did not discuss the Legislative History Project.

Item 9 – Show Cause – Local Officials was then discussed. The following action was taken:

Donald Polk – staff received confirmation from county officials that his term expired in 2006. Mr. Polk was not required to file.

Billy Henley – filed in January

Don Malone – deceased

Larry Watlington – filed within five days after receiving order.

Commissioner Knight moved that orders for Henley, Malone and Watlington matters be dismissed. Commissioner Hall seconded and the motion passed 5-0.

Commissioner Knight moved that Tony Boles be fined \$750 (\$25 per day from June 15). Commissioner Hall seconded and the motion carried 5-0.

The matter against Todd Brown was agreed to be deferred to the August meeting so staff can research the receipt of the mail issue. The certified mail sent to Mr. Brown was returned to the Commission, but the first class mail was not returned.

Carol Cate: Disclosure was filed the day of receipt of order by Ms. Cate. Commissioner Knight made the motion to dismiss the order. Commissioner Hall seconded and the motion passed 5-0.

Gary Collins: Disclosure was filed three days after receipt of the order. Commissioner Knight made the motion to fine Mr. Collins \$75.00. Commissioner Brown seconded and the motion passed 5-0.

Jeffrey Delong: Disclosure was filed the day after receipt of the order. No penalty was warranted. Commissioner Knight made the motion to dismiss and Commissioner Hall seconded. Motion passed 5-0.

Jerry Ford: Received the show cause order on June 10 and filed July 9. Mr. Ford also sent a letter explaining why he had filed late. Commissioner Knight moved that the penalty be waived and Commissioner Brown seconded. Motion passed 5-0.

Matthew Gilbert: Received the show cause order on June 11 and has not responded to date. Staff recommended \$750 penalty. Commissioner Knight moved to accept the recommendation and Commissioner Hall seconded. Motion passed 5-0.

Mark Harris: Registered mail returned unclaimed. Staff recommended \$750. Commissioner Knight moved to accept the recommendation and Commissioner Hall seconded. Motion passed 5-0.

Jack McCanless: Certified mail was returned unclaimed; statement was filed June 13. Staff recommended that no further proceeding was warranted. Commissioner Hall made the motion to accept staff recommendation and Commissioner Garland seconded. Motion passed 5-0.

Johnny Ray – Postal card returned undated on June 13. Mr. Green filed June 17. Staff recommend no further proceeding. Commissioner Hall moved to dismiss; Commissioner Neal seconded and motion passed 5-0.

Verlin Short – Show caused received on June 11. There has been no response to date. Staff recommended \$750 penalty. Commissioner Knight moved to accept the staff recommendation and Commissioner Hall seconded. Motion passed 5-0.

Anthony Smith – Show cause received on June 13; Mr. Smith filed on June 11. Staff recommended no further proceeding. Commissioner Hall made the motion to accept the staff recommendation and Commissioner Garland seconded. Motion passed 5-0.

Benny Spencer – Received order on June 13 and filed disclosure on June 13. Staff recommended no further proceeding. Commissioner Hall moved to accept the staff recommendation and Commissioner Garland seconded. Motion passed 5-0.

Mary Sowders: Filed same day notice was sent. Commissioner Neal made the motion to dismiss and Commissioner Hall seconded. Motion passed 5-0.

Charles Steele: Postal card not returned; regular mail was returned on July 10. Statement was filed June 24 with letter that mail was sent to incorrect address. Staff recommended no further

proceeding. Commissioner Hall made the motion to accept staff recommendation and Commissioner Brown seconded. Motion passed 5-0.

Tommy Wiggington: Staff recommended no further proceeding. Commissioner Neal moved to accept the staff recommendation and Commissioner Hall seconded. Motion passed 5-0.

Fred Wilcoxon: Post Office attempted to deliver certified mail on 3 occasions. First class mail was not returned. Staff recommended \$750 penalty. Commissioner Hall moved to accept staff recommendation and Commissioner Neal seconded. Motion passed 5-0.

Norma Woodlee: Show cause received June 10; statement filed on June 27. Staff recommended penalty for 12 days for a \$300 penalty. Commissioner Knight moved to accept the staff recommendation and Commissioner Brown seconded. Motion passed 5-0.

Commissioner Knight made the motion to vote to impose a penalty if returned certified mail shows that it was unclaimed and if the first class mail was not returned, if staff research showed that a court would deem that proper notice. Commissioner Brown seconded and the motion passed 5-0.

Item 13, TN Credit Union, was considered. TNCU originally sent an informal request. Staff advised that it would need to be a formal request because of the issues involved and the formal request was received on July 15. Commissioner Knight moved that legislative officials who may be delegates and guests to both the Democratic and Republican Conventions are permitted to attend receptions that are sponsored by a Tennessee employer of a lobbyist because it is an outside activity and they received no enhanced benefits by virtue of their public position. Commissioner Hall seconded and the motion passed 5-0. Commissioner Neal moved to accept Commissioner Knight's argument related to provisions of TCA 3-6-305(b)(1) that provides an exception to both delegates to both conventions. Commissioner Knight seconded and the motion passed 5-0.

Item 15: Dr. John Petersen's response to Chairman Hall's letter was discussed. After several commissioners expressed their views on the matter, Commissioner Brown made the motion that the Commission take no further action with regard to Dr. Petersen's disclosures in lieu of the penalty imposed and disclosures that have been filed in response. With no second being made, Commissioner Brown withdrew that motion. After further discussion, Commissioner Brown then made the motion to take no further action with regard to Dr. Petersen's statements due to the fact that he was prompted to file and appeared to cure any deficiency in his filing. Commissioner Neal seconded and the motion passed 5-0.

The meeting adjourned at 3:25 p.m.